

P.O. BOX 5246 CSATF/SP-CI-132L
CORCORAN, CA. 93212

EXHIBIT F

10370

1 POTENTIAL WITNESSES.

2 THE COURT: AND THE MAIN PURPOSE IS TO RECITE
3 AS MANY NAMES AS YOU MIGHT CALL IS JUST TO FIND OUT IF
4 ANY JURORS MIGHT KNOW THESE PEOPLE.

5 MR. ADAIR: THERE IS ONE FURTHER WITNESS THAT
6 MAY BE KNOWN BY POTENTIAL WITNESSES, AND THAT'S A
7 DR. CRYSTAL. AND IF I COULD FIND THAT REPORT FOR THE
8 SPELLING. HE'S, I BELIEVE, AN OPHTHAMOLOGIST OR AN
9 OPTICIAN HERE IN EL CAJON. FRANKLIN A. CRYSTAL,
10 C-R-Y-S-T-A-L. AND HE APPEARS TO BE AN OPHTHAMOLOGIST.

11 THE COURT: ALL RIGHT. THEN WE WILL BE IN
12 RECESS WHILE WE GET MR. BURTON DRESSED OUT.

13 DO YOU KNOW HOW LONG IT'S ANTICIPATED TO TAKE
14 YOUR INVESTIGATOR TO GET WHAT WE NEED?

15 MR. ADAIR: I WOULD THINK HE WOULD BE BACK
16 HERE BY 11:00. HE WAS GOING TO GO SOMEPLACE CLOSE BY.
17 HE THOUGHT 30 MINUTES, BUT I -- IN AN ABUNDANCE OF
18 CAUTION, I THINK IT'S GOING TO BE 11:00.

19 THE COURT: WELL, AS SOON AS WE KNOW THAT WE
20 HAVE THAT ACCOMPLISHED, WE'LL CALL FOR THE PANEL TO COME
21 UP.

22 MR. ADAIR: THERE ARE ADDITIONAL MOTIONS I'D
23 LIKE TO MAKE ON BEHALF OF MR. BURTON.

24 THE COURT: WELL, WHY DON'T WE GO AHEAD AND DO
25 ~~WHAT WE'RE WAITING FOR YOUR INVESTIGATOR.~~

26 MR. ADAIR: AS FAR AS THE REQUEST FOR
27 DISMISSAL BASED UPON A LACK OF SPEEDY TRIAL, YOUR HONOR.

28 MR. BURTON -- APPARENTLY HIS TRIAL WAS DELAYED LAST

1 FALL. I THINK THIS WAS BEFORE I WAS INVOLVED IN IT. IT
 2 WAS DUE TO AN -- APPARENTLY A PROSECUTION WITNESS. ONE
 3 OF THE OFFICERS WHO WAS APPARENTLY OUT OF THE COUNTRY,
 4 AND THE TRIAL WAS DELAYED DUE TO THE UNAVAILABILITY OF
 5 THAT PARTICULAR OFFICER.

6 **THE COURT:** MR. TROCHA, DO YOU HAVE ANY INPUT
 7 ON THAT ISSUE?

8 **MR. TROCHA:** LET ME CHECK, YOUR HONOR. THERE
 9 HAVE BEEN SEVERAL CONTINUANCES.

10 IS THIS THE ONE ON OCTOBER 25TH?

11 **MR. ADAIR:** ~~I REMEMBER THAT'S CORRECT.~~ IT'S
 12 OUR POSITION THAT THE POLICE FORCE IN EL CAJON WAS
 13 NEGLIGENT IN LETTING HIM GO ON HIS VACATION OR LEAVE,
 14 WHICH RESULTED IN THE DELAY OF THE TRIAL AGAINST
 15 MR. BURTON, WHICH RESULTED IN A LACK OF SPEEDY TRIAL FOR
 16 MR. BURTON UNDER THE CALIFORNIA AND U.S. CONSTITUTIONS.

17 **MR. TROCHA:** AS TO THAT POINT, YOUR HONOR,
 18 REGARDLESS OF WHETHER OR NOT THE COURT FOUND GOOD CAUSE
 19 ~~WHETHER THE DEFENDANT WAIVED TIME,~~ I NOTE THAT THE TRIAL
 20 ~~WAS CONTINUED WITH A TIME WAIVER ON DECEMBER 31ST,~~
 21 JANUARY 31ST OF THIS YEAR, MARCH 14TH OF THIS YEAR, AND
 22 MARCH 16TH OF THIS YEAR. ~~SO THAT WOULD RENDER THE~~
 23 ~~DEFENDANT'S OBJECTION MOOT.~~

24 **THE COURT:** WELL, ~~EXARHOS I THINK THE~~
 25 ~~WATIVER WAS OVERCOME THAT ISSUE.~~ AND WHATEVER POINTS
 26 WERE MADE TO JUDGE EXARHOS AT THE TIME ON OCTOBER 13TH,
 27 '04, WHEN HE VACATED THE OCTOBER 25TH TRIAL DATE, ~~THOSE~~
 28 WERE MADE FOR THE RECORD AND HE RULED BASED ON THE

1 NOVEMBER 5TH, 2004, 1:30 P.M., EL CAJON, CA., DEPT. 12

2
3 THE COURT: LADIES AND GENTLEMEN, GOOD
4 AFTERNOON. WE'RE ON THE RECORD IN THE CASE OF THE PEOPLE
5 VERSUS ERIC BURTON, SCE 238643.

6 COUNSEL, YOUR APPEARANCES, PLEASE.

7 MR. JARAMILLO: GOOD AFTERNOON, YOUR HONOR.
8 JORGE JARAMILLO FOR THE PEOPLE.

9 MR. PLUMMER: LEE PLUMMER ON BEHALF OF ERIC
10 BURTON, WHO IS PRESENT, BEFORE THE COURT, IN CUSTODY.

11 THE COURT: ALL RIGHT. THIS MATTER WAS TRAILED
12 FROM THE MORNING CALENDAR, HAD BEEN SET FOR HEARING OF THE
13 DEFENDANT'S MOTION TO SUPPRESS PURSUANT TO PENAL CODE
14 SECTION 1538.5, AND I UNDERSTAND THAT THE PEOPLE HAVE A
15 MOTION TO CONTINUE THAT HEARING.

16 MR. JARAMILLO: THAT'S CORRECT, YOUR HONOR. THE
17 PEOPLE WOULD REQUEST TO CONTINUE THE 1538. WE HAVE AN
18 OFFICER WHO IS OUT OF THE COUNTRY AT THIS TIME.

19 THE COURT: AND WHAT FRIDAY BETWEEN NOW AND THE
20 DECEMBER 6TH TRIAL DATE DO YOU PROPOSE?

21 MR. JARAMILLO: ANY FRIDAY THAT WORKS WITH THE
22 DEFENSE COUNSEL'S CALENDAR.

23 MR. PLUMMER: YOUR HONOR, MY CLIENT IS
24 REQUESTING THE APPOINTMENT OF NEW COUNSEL. HE'S REQUESTING
25 A MARSDEN HEARING.

26 THE COURT: WELL, WE'LL GET TO THAT AS THE NEXT
27 ORDER OF BUSINESS, BUT STAYING WITH THE FIRST ORDER OF
28 BUSINESS, PRESUPPOSING THAT YOU CONTINUED ON THE CASE, MR.

3 6

1 PLUMMER, WHAT'S YOUR AVAILABILITY ON FRIDAY MORNING BETWEEN
2 NOW AND DECEMBER 6TH?

3 MR. PLUMMER: I COULD BE AVAILABLE FOR NOVEMBER
4 19TH, YOUR HONOR.

5 THE COURT: MR. JARAMILLO, WILL THAT WORK?

6 MR. JARAMILLO: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. THEN IRRESPECTIVE OF THE
8 ISSUE OF WHO IS GOING TO REPRESENT MR. BURTON PRESENTLY, THE
9 MOTION TO SUPPRESS WILL BE RESET FOR HEARING ON FRIDAY,
10 NOVEMBER 19TH AT 9:30 IN THE MORNING IN DEPARTMENT 11 OF
11 THIS COURT.

12 MR. PLUMMER: I DO HAVE A WITNESS IN THE
13 COURTROOM, YOUR HONOR. I ASK HE BE ORDERED BACK AT THAT
14 TIME.

15 THE COURT: ALL RIGHT. THE GENTLEMAN'S NAME FOR
16 THE RECORD, PLEASE.

17 THE WITNESS: JERRELL MC KELVEY.

18 THE COURT: SPELL THE FIRST AND LAST NAMES.

19 THE DEFENDANT: FIRST NAME IS J-E-R-R-E-L-L,
20 LAST NAME MC KELVEY, M-C-K-E-L-V-E-Y.

21 THE COURT: THANK YOU, SIR. ALL RIGHT. YOU ARE
22 ORDERED TO RETURN ON FRIDAY, TWO WEEKS FROM NOW AT 9:30 IN
23 THE MORNING TO DEPARTMENT 11 NEXTDOOR UNLESS ADVISED BY MR.
24 BURTON'S ATTORNEY OTHERWISE. OKAY?

25 THE WITNESS: YES.

26 THE COURT: THANK YOU VERY MUCH.

27 ALL RIGHT. TURNING TO THE OTHER APPARENT MATTER
28 THAT IS TO BE ADDRESSED THIS AFTERNOON, MR. BURTON, IS IT,

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FILED
Clerk of the Superior Court
OCT 19 2004
By: M. Rapolla, Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

ERIC BURTON

Defendants.

NO. CE 238643

MOTION TO CONTINUE
PURSUANT TO PENAL CODE
SECTION 1050

11-5-04
Date: ~~October 22, 2004~~
Time: 9:30 a.m.
Dept: 11

Comes now the plaintiff, the People of the State of California, by and through their attorneys, BONNIE M. DUMANIS, District Attorney, and JORGE JARAMILLO, Deputy District Attorney, and respectfully submits the following MOTION TO CONTINUE.

ARGUMENT

The People respectfully request that the court make a finding of good cause to continue the proceedings, based on the unavailability of a necessary witness. Applicable California statutes permit continuance of preliminary hearing or trial at the request of either the defense or the prosecution upon a showing of good cause. (Pen. Code, §§ 859b, 861, 1050(e).) "What constitutes good cause for the delay of a criminal trial is a matter that lies within the discretion of the trial court." (*People v. Johnson* (1980) 26 Cal.3d 557, 570 [emphasis added].)

A necessary witness for the people will be unavailable on the date of the motion hearing. Further, the present motion scheduled has a strong possibility of being decided by the court without requiring live testimony. Should the court decide the motion requires live testimony,

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the people will request a continuance after the date of November 7, 2004. Officer Holmes of the El Cajon Police Department is out of the country until after November 7, 2004.

DECLARATION

I, JORGE JARAMILLO, declare as follows:

1. I am the prosecutor assigned to the above entitled case;
2. Officer Holmes of the El Cajon Police Department will be out of the country on a pre arranged trip at the time of the motion to suppress hearing;
3. Officer Holmes is a necessary witness for the People;

Thus, based on the reasons stated above and in the furtherance of justice, we ask the court to continue the case until a date convenient to all parties.

I declare on information and belief that the above information is true and correct.

Dated: October 19, 2004

Respectfully submitted,

BONNIE M. DUMANIS
District Attorney

By:



JORGE JARAMILLO
Deputy District Attorney

Attorney for the People

1 WOULD APPLY BECAUSE IT'S A DEFENSE TO ASSAULT, BUT THE
2 FLANNEL THEORY WOULD NOT?

3 MR. TROCHA: CORRECT, YOUR HONOR.

4 AND I ADDED IN THE LIOS. I DON'T KNOW IF THEY
5 NEED TO BE GIVEN SUA SPONTE, BUT MY FEELINGS -- IT
6 APPEARS TO BE THAT THE USE -- WANT YOU TO GIVE
7 MISDEMEANOR SIMPLE ASSAULT SUA SPONTE. I JUST DIDN'T
8 WANT TO GET CAUGHT IN THE MIDDLE.

9 THE COURT: WELL, I THINK ANY LIOS HAVE TO BE
10 GIVEN UNLESS IT CAN'T POSSIBLY BE FOUND TO BE A LESSER

~~11 THE COURT: THIS CASE SINCE I HAVE NEVER SEEN AN~~

~~12 THE COURT: I HAVE NEVER SEEN AN~~

~~13 THE COURT: I HAVE NEVER SEEN AN~~

~~14 MR. TROCHA: THIS IS THE ONE RIGHT~~

15 THE COURT: THIS IS FROM THE MOTOR VEHICLE

~~16 ARE THEY DIFFERENT?~~

17 MR. TROCHA: THIS IS ONE -- IT'S NOT IN THE
18 CALJICS -- THAT I HAD TO CRAFT FROM THE STATUTE -- ALSO
19 USING THE 12022 DEFINITIONS AS A TEMPLATE. I ADDED IN
20 THE SIXTH PARAGRAPH DOWN -- RIGHT ABOVE THE NUMBER 1,

~~21 THAT THERE'S A REQUIREMENT THAT THE VEHICLE NOT~~

22 MOTION. AND INDIFFERENT FROM THE OTHER ALLEGATIONS, I
23 NUMBERED THE ELEMENTS JUST TO MAKE IT EASIER TO READ.

24 THE COURT: ALL RIGHT.

~~25 THE COURT: ALL RIGHT.~~

~~THE COURT: ALL RIGHT.~~

~~THE COURT: ALL RIGHT.~~

1 **MR. TROCHA:** CORRECT.

2 **THE COURT:** AND THAT'S, AGAIN, SLIGHTLY
3 DIFFERENT FROM --

4 **MR. TROCHA:** SLIGHTLY DIFFERENT FROM GBI, AND
5 THEY'D HAVE TO USE A GUN.

6 **THE COURT:** OKAY. THAT'S THE ONLY DIFFERENCE
7 REALLY?

8 **MR. TROCHA:** CORRECT.

9 **THE COURT:** ALL RIGHT. I THINK WE'VE GOT
10 1719, 1720. ISN'T THERE IS A LITTLE OVERLAP WITH THE
11 GBI INSTRUCTION AND THE ONE THAT YOU CRAFTED? ARE WE
12 REALLY NEEDING TO GIVE BOTH?

13 **MR. TROCHA:** THE ONLY REASON I THINK WE HAVE
14 TO GIVE BOTH IS THE ONE THAT I CRAFTED APPLIES ONLY TO
15 COUNT 3, WHERE THIS APPLIES TO COUNTS 1, 2, AND 3 --
16 EXCUSE ME -- 1 AND 2.

17 **THE COURT:** AND 3.

18 **MR. TROCHA:** AND 3.

19 **THE COURT:** ALL RIGHT.

20 **MR. TROCHA:** I THINK IT WOULD BE A SENTENCING
21 ISSUE. IF THEY FOUND HIM GUILTY ON BOTH ALLEGATIONS, HE
22 WOULD ONLY HAVE TO BE SENTENCED ON THE .55.

23 **THE COURT:** RIGHT. OKAY. AND THEN WE GET TO
24 THE 17 SERIES.

25 ANYTHING ELSE THAT ANYBODY WANTS TO RAISE
26 ABOUT INSTRUCTIONS TODAY? THIS WAS HELPFUL BECAUSE IT
27 WILL GIVE ME SOMETHING TO THINK ABOUT OVER THE WEEKEND.
28 AND I CAN JUST SUGGEST THAT -- I'LL TELL YOU I LEARNED A

1 LOT IN MY JURY EXPERIENCE, BUT ONE OF THE THINGS WAS
2 SPECIAL ALLEGATIONS AND MULTIPLE ALLEGATIONS. VERY,
3 VERY CONFUSING ESPECIALLY WHEN THEY'RE SIMILAR; GOT
4 MULTIPLE FIREARM ALLEGATIONS, MULTIPLE GBI WITH JUST
5 VERY SMALL DIFFERENCES. SO, YOU KNOW, THINK ABOUT THAT
6 IN PLANNING YOUR ARGUMENT BECAUSE THE JURY -- I WOULD
7 RATHER HAVE IT EXPLAINED TO THEM UP FRONT RATHER THAN
8 GET 10 QUESTIONS LATER. AND THIS IS A CASE THAT'S
9 PRETTY CONFUSING, I THINK. NOT ON THIS BASE ACCEPTANCE,
10 BUT ALL THE LITTLE DETAILS ON ALL OF THE ALLEGATIONS.

11 MR. TROCHA: AND KIND OF ALONG WITH THAT, YOUR
12 HONOR, I'VE NEVER DONE A TRIAL IN A COURTROOM QUITE SET
13 UP LIKE THIS. I WAS INITIALLY PLANNING ON DOING A
14 POWERPOINT TO HELP WITH THAT, BUT --

15 THE COURT: YOU CAN DO THAT.

16 MR. TROCHA: WHERE WOULD I PUT A SCREEN THAT
17 WOULD BE BEST? I DON'T WANT TO BLOCK YOUR HONOR BECAUSE
18 OBVIOUSLY THE CONTENT MIGHT BE A PROBLEM.

19 THE COURT: NO. THAT'S OKAY. I THINK WHEN WE
20 DID THIS LAST, WE HAD THE SCREEN IN FRONT OF ME AND IT
21 WAS SET UP THERE. IF YOU JUST PRINT OUT FOR ME AHEAD OF
22 TIME THE SHEET -- WHICH I REALLY PREFER TO HAVE THE
23 DEFENSE COUNSEL TO HAVE AS WELL SO THAT ANY OBJECTIONS
24 CAN BE ADDRESSED AHEAD OF TIME.

25 MR. TROCHA: DEFINITELY.

26 THE COURT: THEN I COULD BE LOOKING AT HARD
27 COPY PRINTOUT WHILE YOU'RE DOING IT.

28 MR. TROCHA: OKAY. I DIDN'T WANT TO SPRING

1 MR. ADAIR: IF I COULD HAVE ONE.

2 THE COURT: SO LET ME GIVE ONE TO YOU.

3 AND I BELIEVE, MR. TROCHA, SPECIFICALLY THE
4 AMENDMENT INCLUDED A NEW ALLEGATION, SPECIAL ALLEGATION?

5 MR. TROCHA: CORRECT. COUNT 4, JUST THE
6 12022.5(A) ALLEGATION.

7 THE COURT: THAT WAS THE ONLY ADDITIONAL?

8 MR. TROCHA: ~~YES.~~

9 THE COURT: RELATING TO THE PERSONAL USE OF A ~~ALLEGED~~
10 FIREARM.

11 MR. ADAIR: WELL, ~~REDACTED~~
12 THE SECOND AMENDED INFORMATION, YOUR HONOR.

13 MR. BURTON'S TRUE NAME DOES APPEAR THEREON. HE'S BEEN
14 PREVIOUSLY ADVISED OF HIS CONSTITUTIONAL RIGHTS. HE
15 WOULD ENTER PLEAS OF NOT GUILTY AND DENY THE
16 ~~ALLEGATIONS.~~

17 THE COURT: ALL RIGHT. THAT PLEA WILL BE
18 ENTERED.

19 NEXT ON MY LIST OF ISSUES TO ADDRESS WOULD BE
20 THE PEOPLE HAVE TWO MOTIONS THAT THEY FILED. I'M GOING
21 TO NOT HEAR ARGUMENT ON THEM AT THIS TIME, BUT
22 SPECIFICALLY THERE'S A MOTION TO EXCLUDE EVIDENCE OF THE
23 VICTIM'S CHARACTER PURSUANT TO EVIDENCE CODE 1103.

24 AND I HAVE YOUR BRIEF. IN CHAMBERS WE
25 DISCUSSED IT BRIEFLY AND I INDICATED MY UNDERSTANDING
26 THAT THERE MAY BE TWO POTENTIAL WAYS IN WHICH SUCH
27 EVIDENCE WOULD COME IN; ONE WOULD BE WHAT MR. BURTON MAY
28 HAVE KNOWN ABOUT THE VICTIM, AND SECONDLY WOULD BE JUST

1 YOU ARE NOT ELIGIBLE FOR A GRANT OF PROBATION
2 PURSUANT TO PENAL CODE SECTIONS 1203(E)(2), 1203(E)(3),
3 BECAUSE YOU HAVE NOT OVERCOME THE PRESUMPTION OF
4 INELIGIBILITY, AND 12022.53(G), BECAUSE YOU ARE
5 STATUTORILY INELIGIBLE. ACCORDINGLY, THE COURT DENIES
6 PROBATION.

7 PRISON SENTENCE WILL BE AS FOLLOWS:

8 AS TO COUNT 1 FOR VIOLATION OF PENAL CODE
9 664/187(A)/189, ^{ALLEGED}ATTEMPTED, ^{ALLEGED}WILLFUL, AND PREMEDITATED
10 MURDER, YOU ARE SENTENCED TO STATE PRISON FOR THE TERM
11 OF LIFE WITH PAROLE.

12 ON THE PENAL CODE 12022.53(D), ENHANCEMENT,
13 PERSONAL ^{ALLEGED}DISCHARGE OF A FIREARM CAUSING GREAT BODILY
14 INJURY WHILE COMMITTING ^{ALLEGED}ATTEMPTING MURDER, A CONSECUTIVE
15 TERM OF 25 YEARS TO LIFE IS IMPOSED; FOR A TOTAL TERM OF
16 LIFE PLUS 25 YEARS TO LIFE.

17 THE ENHANCEMENTS FOR PENAL CODE 12022.7(A),
18 GREAT BODILY INJURY, AND 12022.5(A), ^{ALLEGED}PERSONAL USE OF A
19 FIREARM, WILL NOT BE IMPOSED IN LIGHT OF THE
20 12022.53(D), ENHANCEMENT.

21 AS TO COUNT 2, FOR VIOLATION OF PENAL CODE
22 SECTION 12034(C), ^{ALLEGED}DISCHARGE OF FIREARM FROM A MOTOR
23 VEHICLE, THE MID-TERM OF FIVE YEARS IS ORDERED.

24 ON THE PENAL CODE 12022.5(A), ENHANCEMENT, THE
25 MIDTERM OF FOUR YEARS IS ORDERED.

26 ON THE PENAL CODE 12022.7(A), ENHANCEMENT, THE
27 MIDTERM OF THREE YEARS IS ORDERED; ALL CONSECUTIVE FOR A
28 TOTAL TERM OF 12 YEARS.

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1 E.C.A.D. subjected defendant to malicious prosecution, 0144
 2 violation of defendant's request for counsel
 3 and defense to ~~the right to remain silent as stated~~
 4 from defendant's initial arrival at the E.C. Police
 5 station as stated and testified by Officer Holmes of the
 6 E.C.A.D. at the 1538.5 suppression hearing with
 7 Judge Puchel presiding. ~~Without any questioning and~~
 8 ~~questioned by interviewing officer Holmes of the~~
 9 E.C.A.D. after the arrest of defendant based on information
 10 illegally obtained ~~from~~ in violation of
 11 the defendant's 5th amendment right to counsel
 12 ~~and right to a speedy trial.~~ Police
 13 department was negligent and caused delay in defendant's
 14 right to a speedy trial caused delay ~~for approximately~~
 15 ~~approximately~~ due to the arresting officer,
 16 Holmes being out of the country as he was needed
 17 to testify at 1538.5 hearing as motion was filed
 18 by defendant's attorney, Plummer. ~~This was total negligence and delay on the part of~~
 19 the E.C.A.D. and prohibition denial defendant's 14th
 20 amendment right to due process (speedy trial).
 21 The defendant has been prejudiced by this negligence
 22 under California law, evidence of deprivation of due
 23 process sufficient to warrant dismissal does not
 24 require a showing of purposeful delay by the prosecution.
 25 Prejudicial delay caused by negligence of law
 26 enforcement agencies or by the prosecution is
 27 sufficient to deny a defendant the right to
 28 due process. (Scheduling v. Superior Court (1978) 22 C3d 493,
 507, 149 CR 597; Penney v. Superior Court (1972) 28 CA3d 941, 953,
 105 CR 162.)

Even if the delay is merely the result of administrative
 misfeasance or simple negligence on the part of the state
 or its officers, it is clear that there must nonetheless be a
 dismissal (Pleybert v. Superior Court (1971) 22 CA3d 169, 99 CA
 340; Penney v. Superior Court (1972) 28 CA3d 941, 105 CR 162;
 Sykes v. Superior Court (1973) 9 CA3d 83, 106 CR 786; Jones v. Superior
 Court supra (Barker v. Wingo, supra.) The delay was both
 prejudicial and intentional. See U.S. v. Branch (5th Cir. 1995) 84 F.3d 1197, 1509.

② Barker v Wingo
 use that ②

ERIC WILTON BURTON #411283150 CJ.

1143 FRONT ST. (619) 615-2700

PO BOX 122952

SAN DIEGO, CALIFORNIA

IN PROPER / PROSE

Superior Court of The State of California
County of San Diego
East County Division

People of The State of
California,
Plaintiff
VS.
Eric Wilton Burton
Defendant.

Dept. 11

Case no. SCE238643 01

MAT33901

DATE: 7-19-05

TIME: 0900

Notice of Motion and
Motion to Dismiss
Because of Denial of
Right to Due Process
Memorandum and Points
of authority

To The above Entitled Court, and to the District
Attorney Bonnie Duran and her representative for
The County of San Diego, State of California
Please Take Notice that on 7-19-05 in Dept. 11 at 0900
or as soon thereafter as the matter may be heard, the
defendant Eric Wilton Burton will move that the
Court dismiss the accusatory pleading filed hereon
the grounds that the prosecution of the defendant
has been unreasonably delayed, violating the defendant's
right to due process guaranteed by the 5th and 14th
amendments to the U.S. Constitution and article I section
15 of the California Constitution. The delay was
approx 60 days. It has now been more than 16 months
from the date the crime allegedly occurred, 9 MAR 2004.
This motion will be based on the attached memorandum
of points and authorities, the attached declaration, all
papers filed and records in this action, evidence taken
at the hearing on this motion, and argument at that
hearing.

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